IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: J U D G M E N T ::

Kanhiya Lal
Vs.
State of Rajasthan

D.B. Civil Special Appeal No.54/1989
under Section 18 of the Rajasthan High Court Ordinance.

Date of Order :: 25-04-2006

:: **P R E S E N T** ::

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Mr. M.R. Singhvi, for the appellant.
None for the respondents.

PER HON'BLE SHRI S.N.JHA,C.J.)(ORAL)-

This special appeal is directed against the order of learned Single Judge dated 28.9.1989 in SBCWP No.3094/89 dismissing the writ petition of the appellant.

The appellant had filed the writ petition challenging the order dated 22.4.1987 by which punishment of stoppage of two grade increments with cumulative effects was awarded, and the order dated 3.1.1989 by which his application for review of the punishment was dismissed.

The appeal is fit to be allowed on a short point and it is not necessary to set out the facts of the case in details. Suffice it to say that on 28.1.1984, departmental proceeding under rule 16 of the Rajasthan Civil Services(Classification, Control and Appeal)Rules, 1958 (in short, the 'CCA Rules') was initiated against the appellant by the State Government. The order was issued by the Deputy Secretary, Department of Personnel, Government of Rajasthan, in the name of the Governor. The order was accompanied by the statement of impartation and charge-sheet. As per the charge-sheet, the appellant had caused disappearance of records of two assessees namely M/s. Ramlal Radheyshyam, Sardar Sahar and M/s. Bhishanlal Ram Kumar, Sardar Sahar during his tenure as Senior Clerk in the office of Commercial Taxes Officer, Ward-A at Churu. On 13.12.1984, order was passed for joint enquiry. The order stated that the Governor was of the view that proceedings have been initiated against three persons namely Shri Ram Singh and Deen Dayal, Senior clerk and Junior clerk respectively, besides the appellant, with respect to the same incident, and it would be appropriate to hold joint enquiry under Rule 18 of the CCA Rules. The appellant filed his written statement participated in the enquiry. He was finally awarded punishment of stoppage of two grade increments as mentioned at the outset. The learned Single Judge held that the rules of natural justice had been

complied with and there was no infirmity in the proceeding, the order therefore did not require any interference, and accordingly dismissed the writ petition.

Assailing the validity of the departmental proceeding and the punishment awarded to the appellant, Shri M.R. Singhvi submitted that the proceeding was conducted contrary to the mandate of rule 18 of the CCA Rules read with rule 16. Not only the proceeding was conducted contrary to the rules, appellant suffered prejudice on account of non-compliance and the proceeding and the orders passed therein are fit to be set aside. Counsel stated that the proceeding was held on the basis of charge-sheet dated 21.8.1989. According to him, after decision was taken to hold the joint enquiry under rule 18 on 13.12.1984 the respondents should have issued a fresh charge-sheet and called upon the appellant to file written statement in respect of his defence. On the basis of charge-sheet already issued, joint enquiry could not be held and punishment awarded.

Rule 18 of the CCA Rules runs as under:-

> **Rule 18 Joint Enquiry-**(1) Where two or more Government servants are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from

> service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.
>
> (2) Any such order shall specify.-
>
> (i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings.
>
> (ii) the penalties specified in rule 14 which such Disciplinary Authority shall be competent to impose; and
>
> (iii)Whether the procedure prescribed in rules 16 and 17 may be followed in the proceedings."

On a plain reading, it would appear that rule 18 is enabling provision which empowers the Governor or any other authority competent to impose the penalty of dismissal of service to take disciplinary action in a common proceeding where two or more government servants are concerned in any case that is, hold a joint enquiry. An order for joint enquiry can be passed either at the outset or during currency of the departmental proceedings already initiated. Rule 18 does not contemplate enquiry as such thereunder, the enquiry in case has to be held either under rules 16 or 17 of the CCA Rules, as the case may be, that is to say, by following the procedure prescribed in rules 16 or

17. It would thus follow that rule 18 has to be read subject to rule 16. In other words, there cannot be any independent enquiry under rule 18, the enquiry in any case has to be held under rules 16 or 17 as the case may be.

Before considering the implications of non-compliance of the relevant provisions of rule 16 as canvassed before us, it would be appropriate to notice the rule so far as relevant as under:-

> **RULE 16(2)-** The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement indicating whether he admits the truth of all or any of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person:
>
> Provided that it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement or allegation made by the person charged in the course of his defence.

Explanation- In this sub-rule and in sub-rule (3) the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties, specified in clauses (i) to (iii) of Rule 14."

....

(4)-On receipt of the written statement, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquire into such of the charges, as are not admitted or if, it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Authority for the purpose, and where all the articles of charges have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge.

If the Government servant who has not admitted any of the articles of charge in the written statement of defence or has not submitted any written statement of defence appears before the Inquiring Authority, such Authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

> The Inquiring Authority shall return a finding of guilt in respect of those articles of charge which the Government servant pleads guilty.

On reading of the above rules, it would appear that under sub-rule (2) of rule 16, the Disciplinary Authority is required to frame definite charges on the basis of allegations on which the enquiry is proposed to be held. Such charges are to be communicated in writing to the delinquent and he is required to submit a written statement indicating as to whether he admits the truth of all or any of the charges, together with explanation or defence, if any as he may offer. Under sub-rule (4), on receipt of the written statement or defence, or if no such statement is received from the delinquent within the specified time, the Disciplinary Authority may either inquire into the charges itself or if it considers so necessary, appoint an Inquiring Authority for the purpose.

It is therefore, manifest that on receipt of written statement of defence, the Disciplinary Authority is required to apply its mind and consider taking further action against delinquent. Filing of written statement is not empty formality. The written statement is filed to enable the disciplinary authority to consider whether the defence offered by the delinquent, if any, has any

truth. If the Disciplinary Authority is satisfied with the defence, it is not supposed to proceed further against delinquent.

Where, thus, joint enquiry is ordered by the Governor or the authority otherwise competent to impose the penalty of dismissal of service, specifying among other things the Disciplinary Authority for the purpose of such common proceeding but no charge-sheet is issued by such Disciplinary Authority in terms of rule 16, and the delinquent is denied opportunity to file written statement of his defence, possibility of his suffering prejudice is writ large. As indicated above, rule 18 has to be read subject to rule 16 and therefore, it is imperative that delinquent is provided with an opportunity to have his written statement of his defence considered by the Disciplinary Authority specified under rule 18. Where no charge-sheet issued by such Disciplinary Authority and the delinquent is denied the opportunity to file written statement/defence it not only results in prejudice to the delinquent but also causes infirmity in the departmental proceedings.

We are fortified in our views by the judgment of a learned Single Judge of this Court in Durga Dan Vs. State of Rajasthan, SB Civil Writ Petition No.1314/1972 decided on 2.9.1974, affirmed

by the Division Bench in DB Civil Special Appeal No.753/1974 decided on 11.7.1983. In that case, charge-sheet had been issued by the Superintendent of Police. Later the Inspector General of Police ordered joint enquiry against petitioner and others, and Deputy Inspector General of Police, Jodhpur Range was appointed as Disciplinary Authority as regards other delinquent and Superintendent of Police, Pali was appointed Disciplinary Authority as regards the petitioner. After such appointment however, no fresh charge-sheet was issued by the Superintendent of Police or the D.I.G. Accepting the challenge to the validity of the proceeding and the punishment awarded therein, the learned Judge observed as under:-

> "On the other hand the specific requirement of Rule 16(2) is that the Disciplinary Authority should frame the charge sheet and serve a copy thereof on the delinquent officer. In the present case nothing of the kind was done with the result that the enquiry was conducted without a proper charge sheet ever coming into existence and the absence of a charge sheet vitiated the entire enquiry conducted by the Superintendent of Police. Such an enquiry without first framing a charge sheet by the Disciplinary Authority was wholly unauthorised and illegal. Moreover, the delinquent officer was not given any opportunity by the Deputy

> Inspector General of Police, who was named as the Disciplinary Authority for the joint enquiry to furnish a written statement of his defence, which could have been done only after a charge sheet would have been served upon the petitioner by the said Disciplinary Authority. The petitioner was certainly prejudiced by the non-observance of the Provisions of rule 16 as the Disciplinary Authority named for the joint enquiry does not appear to have ever applied his mind as to whether any charges or which of them required to be enquired into and the enquiry without a proper charge sheet is entirely invalid and illegal."

Affirming the judgment of the learned Single Judge, the Division Bench observed as under:-

> "The framing of the charge-sheet and the application of ind both before framing the charge sheet and after receiving the reply from the delinquent officer to decide whether the proceedings should proceed further or not, are matters of substance and not of form only. They are the bed-rock and foundation on which the entire proceedings under rule 16 are based. Any casual superfunctory decision, without proper application of mind, can result in commencement of proceedings which may ultimately fail and put the State exchequer as well as the delinquent officer under great

> financial strain and torture. We, therefore, cannot ignore the importance of proper application of mind by a proper authority, who must be competent and conscious about the proceedings and his own rights and duty in the matter of framing of charge sheet and also in the matter of taking a decision, after considering the reply, whether the charges should be dropped or an enquiry should be proceeded with thereafter.

The instant case is covered by the above quoted observations. We are satisfied in the facts and circumstances, that non-compliance of rule 16(2) of the CCA Rules caused serious dent in the conduct of the Disciplinary Authority and the punishment awarded therein cannot be sustained. In the ordinary course, we would remit the matter to the disciplinary authority for proceeding de novo which is what is normally done where the order is set aside on any technical ground including violation of rules of natural justice but in the instant case, not only the charge is pretty old the appellant also retired from service on superannuation long back. In the circumstance, it would not be proper exercise of discretion to remit the matter for de novo proceeding. The matter should be allowed to rest.

In the result, the orders impugned in the writ petition dated 22.7.1984 and 3.1.1989 are set aside. The order of the learned Single Judge

affirming the said orders is also set aside. The appeal thus stands allowed with no order as to costs.

[DINESH MAHESHWARI],J. **[S.N.JHA],CJ.**

Praveen